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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 02 266 55190 Office: VERMONT SERVICE CENTER Date: JUN 14 2005

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a postdoctoral research associate at Yale Medical School. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The petitioner, at the time of filing, was conducting a screening project for glaucoma, a disorder of the eye that can cause blindness if untreated. The director, in denying the petition, concluded that the petitioner has not shown that her work is national in scope. If the petitioner, a physician, were simply practicing clinical medicine, this finding would be defensible, because the impact of a clinical medical practitioner is generally limited to the patients whom that physician treats. In this instance, however, the beneficiary is conducting and publishing research. We have held that medical and scientific research at major institutions is inherently national in scope, because the results are disseminated nationally (and internationally) through publications and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

We note that, on appeal, counsel states that the examiner who adjudicated the petition "apparently thinks that only people in New Haven, Connecticut get glaucoma." The conclusion that the petitioner's work is local may stem from several letters and documents which describe the petitioner's work on a study, funded by the Community Foundation for Greater New Haven, "designed to detect glaucoma among the high-risk population of New Haven." Any improvement in glaucoma screening techniques can ultimately have national impact, but the immediate impact of screening "the high-risk population of New Haven" is obviously limited to the particular individuals in New Haven who submit to such screening. Thus, the examiner did not conclude that "only people in New Haven, Connecticut get glaucoma"; but only people in New Haven, Connecticut have been screened by the petitioner as part of this particular project. The national scope of the petitioner's work arises from the dissemination of her findings, rather than from performing glaucoma screenings on individuals from one city.

The director, in the denial notice, stated that the petitioner's achievements "pale in comparison" to those of some of the petitioner's witnesses. This would be a valid criticism in the context of a petition seeking to classify the alien as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, but here, the petitioner need not establish that she ranks at the top of her field in order to qualify for the national interest waiver. (That being said, we note that several witnesses have *claimed* that the petitioner is at the top of her field. If the petitioner is unable to substantiate this assertion, the director may take that fact into account when evaluating the credibility or reliability of the letters containing such claims.)

The director stated that the letters submitted in support of the petition "seem to come from individuals who know the beneficiary personally." While some of the witnesses are the petitioner's collaborators or mentors, a substantial number of the witnesses have no demonstrated connection to the petitioner. If the director seeks additional information in this regard, the director should instruct the petitioner to submit complete *curricula vitae* from the witnesses in question, and/or new statements in which the witnesses specify when and how they first became aware of the petitioner's work in the field.

The director's discussion of citation of the petitioner's published work was appropriate, but citations are only one means by which a researcher's impact can be measured. Here, again, the director appears to have given too little attention to what appear to be independent witness statements. Upon careful consideration, we find that a new decision is in order, subsequent to more thorough review of the evidence by the director.

We note that general arguments regarding a shortage of clinician researchers do not form a strong basis for approval of the waiver, because the labor certification process already exists to address worker shortages of this kind. Similarly, we are not persuaded by the assertion that few United States workers know how to operate an ultrasonic biomicroscope. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215, 221 (Comm. 1998).

Even if the petitioner otherwise demonstrates eligibility for the waiver, the director has heretofore overlooked a necessary step in the application process. 8 C.F.R. § 204.5(k)(4)(ii) states that, to apply for a national interest waiver, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The petitioner did not submit this form with the initial filing, and therefore, even if all other circumstances had been unambiguously favorable, we could not approve the petition as it now stands. The director did not mention this omission either in the request for evidence or in the subsequent denial notice. Because the director never notified the petitioner that this initial evidence was missing, pursuant to 8 C.F.R. § 103.2(b)(8), the lack of this documentation cannot serve as a primary basis for dismissal at this stage. The director must allow the petitioner the opportunity to submit Form ETA-750B as required. If the petitioner does not submit this form in response to such a request, then by regulation the petitioner has not properly applied for the waiver and the director may then deny the petition on that basis.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.